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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

September 9, 1999

EDWARD W. HUMMERS, JR.
202-457-7145

Internet Address:
ehummers@hklaw.com

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals, 445 Twelfth Street, S.W.
Room TW-A325
Washington, DC 20554

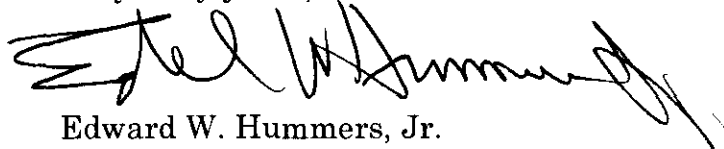
Re: ET Docket No. 99-267
Lookout Mountain Antenna Farm Proceeding

Dear Ms. Salas:

Transmitted herewith on behalf of Lake Cedar Group LLC are an original and four copies of its Reply Comments with regard to the Petition for Reconsideration filed by the Advisory Council on Historic Preservation in the above-referenced docket.

Should there be any questions, please communicate with the undersigned.

Very truly yours,



Edward W. Hummers, Jr.
Counsel for Lake Cedar Group LLC

ewh:ik

Enclosure

Courtesy copies: The Honorable William E. Kennard
The Honorable Harold Furchtgott-Roth
The Honorable Susan Ness
The Honorable Michael K. Powell
The Honorable Gloria Tristani

cc: Roy J. Stewart, Esq.; Ava Holly Berland, Esq.; Shaun A. Maher, Esq.
Dr. Robert F. Cleveland

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Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Canyon Area Residents for the Environment)
Request for Review of Action Taken Under)
Delegated Authority on a Petition for)
an Environmental Impact Statement)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

ET Docket No. 99-267

To the Commission:

**REPLY COMMENTS OF LAKE CEDAR GROUP LLC
WITH REGARD TO
THE PETITION FOR RECONSIDERATION
FILED BY
ADVISORY COUNCIL ON HISTORIC PRESERVATION**

Lake Cedar Group LLC ("LCG") and each of its members, Group W/CBS Television Stations Partners, licensee of KCNC-TV; McGraw-Hill Broadcasting Company, Inc., licensee of KMGH-TV; Rocky Mountain Public Broadcasting Network, Inc., licensee of KRMA-TV; Twenver Broadcast, Inc., licensee of KTVD; and Gannett Colorado Broadcasting, Inc., licensee of KUSA-TV, collectively ("Broadcasters") and individually, hereby file the following reply comments with regard to comments filed in the above referenced docket.

1. In response to the Commission's Public Notice in this proceeding (DA 99-1211), the following parties filed comments: Canyon Area Residents for the Environment, Inc. ("CARE") comments on July 23, 1999 ("CARE Comments") and supplementary comments on August 27, 1999 ("CARE Supplement"); BellSouth Corporation on August

23, 1999 (“BellSouth Comments”)¹; Paul D. Kalkwarf on July 15, 1999 (“Kalkwarf Comments”); Mount Vernon Country Club Metropolitan District dated July 13, 1999 (“Mount Vernon Comments”); Edna Fiore dated July 14, 1999 (“Fiore Comments”); Jefferson County Historical Commission dated July 15, 1999 (“Historical Commission Comments”); Buffalo Bill Memorial Museum dated July 19, 1999 (“Museum Comments”); Kristi Butterwick, Ph. D. dated July 23, 1999 (“Butterwick Comments”); and Ergotec Association, Inc. (“Ergotec Comments”). The comments are long on rhetoric and devoid of facts demonstrating an adverse impact upon the historic properties in question or that the Commission’s *Memorandum and Opinion and Order*, adopted and released on May 27, 1999 (FCC 99-123), is in error.

The Lookout Mountain Antenna Farm

2. CARE, without supporting evidence, continues to assert that the LCG Tower is not proposed to be located in an established antenna farm. CARE Comments at 2. The facts belie this assertion. The photographs submitted as Attachment No. 3 to the “Opposition of Lake Cedar Group LLC to the Petition for Reconsideration Filed by Advisory Council on Historic Preservation” clearly show that the area is a *de facto* antenna farm. Indeed, until CARE became aware of the antenna farm categorical exemption for the Commission’s environmental processing rules it called Lookout Mountain an antenna farm. The Jefferson County Historical Commission states that in 1995 over 450 transmission

¹ The BellSouth Comments correctly note that for 25 years the Commission’s environmental rules have exempted transmitting facilities located in antenna farms from formal reporting and environmental processing requirements, subject to limits on radiofrequency emission levels and, to overcome this exemption, an interested party must make a substantial showing under Section 1.1307(c) that a proposed facility will have a significant effect on the environment. BellSouth Comments 2-3. BellSouth states that CARE has not presented any qualitative evidence to show how the LCG Tower may have the potential to affect the historic properties in the area and has failed to meet the burden of proof the Commission places upon it. *Id.* The Commission should take heed that “[a]ny departure from this precedent will discourage FCC licensee from

devices were located at the Lookout Mountain Antenna Farm. Historical Commission Comments at 1. It must be found that the proposed LCG Tower site is located within a *de facto* antenna farm and is, therefore, categorically exempt from environmental processing.

Alleged Visual Impact

3. It is alleged that the LCG Tower and transmitter building will have an adverse impact on the mountain backdrop and be a visual impairment to the historic properties in the area. CARE Comments at 3-4, 9-11; CARE Supplement; Mount Vernon Comments at 1; Historical Commission Comments at 1; Kalkwarf at 1; Museum Comments at 1. The only proffered evidence of that impact are the poor quality photocopies of photographs supposing to simulate the LCG Tower and transmitter building. CARE Supplement. First, the photocopies of the photographs are of such poor quality that they are unusable. To the extent they are usable, they are not probative because they do not show views from the historic properties in question; they do not show the deletion of the four towers that will be removed; and they do not compare the present view with an accurate simulated view.

4. Further, at least one of the photographs can be readily determined to be inaccurate and misleading. The photograph labeled "Simulation of Proposed Tower and building as viewed from County Administration Building" is not produced to scale. If the tower shown represents the proposed 850 foot tower, the transmitter building as simulated would be over 100 feet high, when it is proposed to be only 135 feet in length. The depiction highlights the building against the background. In fact, the transmitter building will be tucked into the slope of the mountain below the ridgeline; at the request of the

selecting environmentally preferable locations within antenna farms because such siting decisions would be subject to attack by unsubstantial third-party showings." *Id.* at 4.

Jefferson County Planning Department, it will have a pitched roof; the exterior façade will incorporate natural material or be painted in natural colors to blend into the natural surroundings; and the area around the building will be landscaped with native vegetation.² Importantly, with regard to the impact on the historic sites in question, the LCG transmitter building will be below the ridgeline and not visible therefrom.

Levels of Radiofrequency Emissions on Lookout Mountain

5. The issue of present levels of radiofrequency emissions on Lookout Mountain is again raised. CARE Comments at 4; Mount Vernon Comments at 1; Historical Commission Comments at 1; Ergotec Comments *passim*. Ergotec asserts that the Congress and the Commission “**cannot force** State and Local governments to plant microwave towers in their sovereign land, and especially not in registered historic areas.” Ergotec Comments at 3 (emphasis in original).

6. The issue of RF levels on Lookout Mountain has already been addressed by the Commission and the area is presently in compliance with the applicable guidelines. In any event, it is irrelevant to the issue of the potential impact of the LCG Tower on the historic properties. The record before the Commission clearly establishes that previously existing hot spots resulted from FM station transmissions and not from TV stations. More importantly, the proposed LCG Tower will generally improve the RF environment in the vicinity of the Lookout Mountain Antenna Farm by substituting FM antennas with improved radiation characteristics and increasing the height of antennas above ground. The irrelevant assertion by Ergotec concerning the “planting of microwave towers” in registered historic

² CARE complains of the architecture of the proposed transmitter building. CARE Comments 5-6. The building is not proposed to be an architectural statement but, rather, a simple building blending into the background. LCG has made every effort to minimize the effect of the building. If proposed architecture must please every person, nothing will ever be constructed.

areas is further evidence of the hysteria caused by the misinformation being disseminated about the LCG project.³ The issue of RF emissions need not and should not be considered further.

Alleged Impact Upon other Historic Properties

7. The Advisory Council on Historic Preservation (“ACHP”) raised its concern only with regard to the Lariat Trail Scenic Mountain Drive, Lookout Mountain Park and the Charles Boettcher Summer Home. However, some of the commentors allege the proposed LCG Tower will have an adverse impact upon virtually every historic site located in Jefferson County. CARE Comments at 7-15; Fiore Comments at 1; Mount Vernon Comments *passim*; Museum Comments *passim*. Mere assertions without supporting evidence are not sufficient to support a finding of adverse impact upon historic properties.

8. In any event, the evidence presented by LCG and Broadcasters demonstrates that the proposed removal of antenna towers and transmitter buildings will have a beneficial effect upon the Lariat Trail, Lookout Mountain Park and the Boettcher Home. *A fortiori*, the LCG tower consolidation plan will have a beneficial effect upon those historic sites more distant from the Lookout Mountain Antenna Farm.

Native American Sites

9. Commentors allege that the LCG Tower will disturb or interfere with Native American sacred sites, referencing, in particular, the Magic Mountain Archaeological Site (“Magic Mountain”). CARE Comments at 6, Exhibit 10; Fiore Comments *passim*; Butterwick at 1; Kalkwarf at 1. Other than the reference to Magic Mountain, no specifics are provided.

³ Ergotec’s spurious arguments regarding the constitutionality of our system of government, which reflects misunderstandings of both the meaning and legality of federalism, further underscore the baselessness

10. Magic Mountain is said to be located just north of Heritage Square, which is a small amusement park. CARE Comments Exhibit 10 at 2. That location is a substantial distance from the LCG site and any construction thereon could not possibly affect the archeological site. Apparently, neither the construction associated with the Heritage Square Amusement Park, the homes of the residents of Lookout Mountain, nor the \$2,000,000 construction at the Lookout Mountain Nature Center (Historical Commission's Comments at 2) were considered as having an adverse impact on Magic Mountain or the Lookout Mountain land formerly occupied by Native Americans. The LCG Tower project will do much to protect land on Lookout Mountain, as 94% of the LCG property will be preserved as undeveloped open space unavailable for future development.

11. As the complaining Commentors know, or should know, sites having potential archeological value are not generally disclosed to the public in order to protect them from unauthorized exploration. That is precisely why LCG first advised the Colorado Historical Society of the precise location of its proposed project and was advised thereby that "[a] search of the Colorado Cultural Resource Inventory indicated that there are no known cultural resources within the area of potential effect." Attachment No. 1. LCG was further advised that "if previously unidentified archeological resources are discovered in the course of the project, work must be interrupted until the resources are properly evaluated in terms of the National Register of Historic Places eligibility criteria (36 CFR 60.4) in consultation with [the Historic Society] office." *Id.* LCG would follow that requirement and the LCG project imposes no danger to archaeological or other cultural resources.

of Ergotec's position.

Alleged EMI Interference

12. Commentors argue that the LCG Tower will have an adverse affect upon the historic properties because of alleged EMI interference, citing examples of equipment failure or interference. CARE Comments at 9, Exhibit 18; Museum Comments at 1-2; Ergotec Comments at 2. Clearly, the tower proposed by LCG, which has yet to be constructed, cannot be the cause of the alleged EMI. In fact, Hewlett Packard, after repeated study of the Colorado Tape Backup System used by the Buffalo Bill Memorial Museum, has “tried all they can and they can’t figure out the source of the problem.” Museum Comments 1-2.

13. LCG does not ignore complaints of EMI and has volunteered to be part of the solution rather than the problem. First, as a new broadcast facility, Broadcasters would comply with the Commission requirement and assume full financial responsibility for remedying new complaints of blanketing interference for the one year period following commencement of operation. Thereafter, Broadcasters would provide technical information and assistance to complainants on remedies for blanketing interference.⁴

14. Broadcasters proposed to Jefferson County the establishment of a Mountain Management Program which would organize the radio transmitting entities using the Lookout Mountain Antenna Farm for the purpose, *inter alia*, of monitoring RF emission levels and addressing EMI complaints. Broadcasters have committed to participate in the

⁴ Broadcasters will comply with the Commission’s rule in effect at the time of construction. Section 73.685(d) of the rules governing blanketing by television stations, 47 CFR § 73.685(d), is substantially different from the blanketing rules for AM and FM stations found in Sections 73.88 and 73.318, respectively, 47 CFR § 73.88 and 47 CFR § 73.318. A proposed common rule for all three services remains pending before the Commission. See *Notice of Proposed Rule Making, In the Matter of Amendment of Parts 73 of the Commission’s Rules to More Effectively Resolve Broadcast Interference, Including interference to Consumer Electronics and Other Communications Devices*, MM Docket No. 96-62, 11 FCC Rcd 4750 (1996) (“*Blanketing NPRM*”).

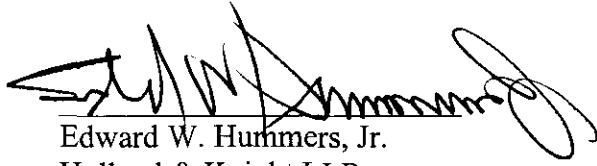
funding of the Mountain Management Program⁵ and have agreed to accept the imposition of the Mountain Management Plan as a condition of the grant of the LCG rezoning.

Conclusion

15. Nothing in the comments presented by the various parties, as a matter of law, demonstrates that the Commission erred in concluding that Broadcasters were not required to file an Environment Assessment with regard to the potential impact upon the historic properties in question because the LCG Tower would be constructed at the Lookout Mountain Antenna Farm and thereby categorically excluded from that environmental requirement. As a matter of fact, any objective evaluation of the evidence presented with regard to the LCG Tower proposed to be constructed at the Lookout Mountain Antenna Farm must conclude that it will have a beneficial effect on the historic properties. Therefore, the Commission should find within the meaning of the ACHP rules that “no historic properties are affected.” The ACHP petition for reconsideration should be denied and the *Memorandum Opinion and Order*, adopted and released on May 27, 1999 (FCC 99-123), should be affirmed.

⁵ Steps have already begun by an informal group of those utilizing the Lookout Mountain Antenna Farm to identify and catalogue the location and radio facilities located at the Antenna Farm.

Respectfully submitted,



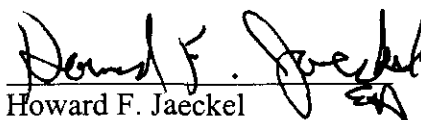
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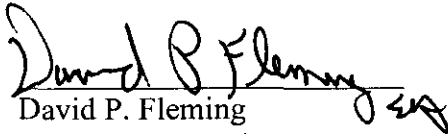
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September 9, 1999



COLORADO
HISTORICAL
SOCIETY

The Colorado History Museum 1300 Broadway Denver, Colorado 80203-2137

July 30, 1998

Charlie Foster
Lake Cedar Group
FAX # (303) 694 -3644

Re: HOTV Project Facility - Lookout Mountain, Golden

Dear Mr. Foster:

This is to acknowledge receipt of your July 29, 1998 correspondence concerning the above proposed project.

A search of the Colorado Cultural Resource Inventory indicated that there are no known cultural resources within the area of potential effect. Based on the information supplied, we believe the present nature of the proposed project area is such that no further impact upon cultural resources will occur. Therefore, the undertaking may proceed upon approval of the appropriate agency.

However, if previously unidentified archaeological resources are discovered in the course of the project, work must be interrupted until the resources are properly evaluated in terms of the National Register of Historic Places eligibility criteria (36 CFR 60.4) in consultation with this office.

Thank you for the opportunity to comment. If we may be of further assistance, please contact Jim Green at (303) 866-4674.

Sincerely,

Georgianna Contiguglia
State Historic Preservation Officer

GC/WJG

CERTIFICATE OF SERVICE

I, Inder Kashyap, an employee of the firm of Holland & Knight LLP, do hereby certify that a copy of the foregoing Reply Comments of Lake Cedar Group was served by first class mail, U.S. postage prepaid, this 9th day of September, 1999 to the following:

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